

FAIR POLITICAL PRACTICES COMMISSION
Memorandum

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin, and Remy

From: Joan Giannetta, Legal Assistant
John Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Date: August 10, 2005

Re: Annual Technical Clean-up Packet: Amendments to Regulations 18401,
18427.1, 18700, 18705, 18707.9, 18730, and 18750

.....

Executive Summary

Commission staff periodically conducts a review of regulations to the Political Reform Act ("Act"¹) and presents non-substantive amendments to insure general uniformity throughout the Act. Several technical "clean-up" amendments are currently proposed which will eliminate outdated references or make similar conforming changes. Although the proposed amendments are technical in nature, they have been noticed to the public. As of the date of this memorandum, no public comments have been received. Staff recommends adoption of the following proposed amendments and has included the full text of each regulation as an attachment to this memorandum.

Overview of the Specific Regulations

Item 1. Regulation 18401 – Required Recordkeeping for Chapter 4.

Problem: As presented, it appears from the introductory language for subdivisions (a)(2) and (a)(3) that no records are required for miscellaneous receipts of \$100 or more.

Solution: Amend 2 Cal. Code Regs. section 18401(a)(2):

¶...¶

(2) For a contribution received ~~or other receipt~~ of \$25 or more, but less than \$100, and for other receipts of \$25 or more:

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Item 2. Regulation 18427.1 – Notification to Contributors of \$5,000 or More.

Problem: The definition of “late contribution” in section 82036 was amended effective January 1, 2005, to include contributions totaling \$1,000 or more made to or received by a political party committee during the 16-day period prior to any state election. (Section 85205 defines “political party” committee to mean the state and county central committees.) As a result, political party committees and committees that make late contributions to political party committees must disclose them within 24 hours pursuant to section 84203.

Section 84105 requires committees that receive contributions totaling \$5,000 or more from a single contributor during a calendar year to send written notice to the contributor of the requirement to file reports as a “major donor committee” if contributions totaling \$10,000 or more are made in a calendar year. (Section 82013(c).) Regulation 18427.1 specifies the content of the notice, including specific language alerting contributors to the late contribution reporting requirement.

Solution: Amend 2 Cal. Code Regs. section 18427.1(b) to include late contributions made to political party committees in the required notice to major donors:

¶...¶

... In addition, once you become a major donor, you are required to file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate, any of the candidate’s controlled committees, or to a committee primarily formed to support or oppose a candidate or ballot measure during the 16 days before the election in which the candidate or ballot measure is being voted on, or make contributions totaling \$1,000 or more to state or county political party committees during the 16 days prior to a state election.

Item 3. Regulation 18700 – Basic Rule; Guide to Conflict of Interest Regulations.

Problem: Regulation 18709, implementing the “segmentation” concept, was added in 2003. Regulation 18700 needs a conforming change to refer to this new regulation in the context of the eight-step process.

Solution: Amend 2 Cal. Code Regs. Section 18700(b)(6) to add a reference to regulation 18709.

¶...¶

(6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of

Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See Cal. Code Regs., tit. 2, § 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act. **If it is reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, and the official does not participate in the decision, determine whether the official may segment the decision into separate decisions to allow his or her participation in subsequent decisions. (See Cal. Code Regs. tit. 2, § 18709.)**

Item 4. Regulation 18705 – Standards for Determining Whether a Financial Effect on an Economic Interest is Material.

Problem: Language in regulation 18705(c) implies that the exception in 18705(c)(1) applies to regulation 18705.5, but 18705.5 is not referenced in 18705(c)(1). As a result, the language in 18705(c) is not consistent with the language in 18705(c)(1).

Solution: Amend 2 Cal. Code Regs. section 18705 with clarifying language to internally harmonize the regulatory language of subdivision (c). Additionally, subdivision (c)(1) has been dropped and incorporated into subdivision (c) since there is no subdivision (c)(2).

¶...¶

(c) Special Rules. Notwithstanding Title 2, California Code of Regulations, sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if: (1) Although a conflict of interest would otherwise exist under Title 2, California Code of Regulations, sections 18705.1 through ~~18705.4~~, **18705.5**, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, ~~or~~ on the real property **in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family.**

Item 5. Regulation 18707.9 – Public Generally – Residential Properties.

Problem: Subdivision (a) of regulation 18707.9 refers to regulation 18707.3(b), which was repealed. Regulation 18707.3(b) provided a definition of personal residence.

Solution: Amend 2 Cal. Code Regs. Section 18707.9 by deleting the reference to regulation 18707.3 and make one other clarifying change.

(a) For purposes of this regulation, the ~~The~~ effect of a governmental decision on a public official's real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units. A public official's principal residence, ~~as defined in Title 2, California Code of Regulations, section 18707.3(b),~~ does not count as one of these residential property units ~~a unit for purposes of this subdivision.~~

Item 6. Regulation 18730 – Provisions of the Conflict of Interest Codes.

Problem: Regulation 18730, at subsection (b)(7)(A)(4), currently reads:

A statement whether the fair market value of the investment or interest in real property **exceeds** two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

However, the corresponding statute - **Disclosure of Investment or Interest in Real Property** section 87206(d) reads:

(d) A statement whether the fair market value of the investment or interest in real property **equals or exceeds** two thousand dollars (\$2,000)

Solution: Regulation 18730 should be reworded to conform to the language of the statute by adding "**equals or**."

Item 7. Regulation 18750 – Procedures for the Promulgation and Adoption of Conflict of Interest Codes for State Agencies.

Problem: Regulation 18750 says it applies to all state agencies. However, the actual scope is only for those agencies under the Commission's authority as the code reviewing body. (Regulation 82011 states that this does not include agencies in the judicial branch of government.)

Solution: Amend 2 Cal. Code Regs. section 18750 with clarifying language at subdivision (a) defining the scope of the regulation in light of the statute.

(a) Unless otherwise modified, the term 'agency' as used in this section shall refer to a state agency **other than an agency in the judicial branch**

of government. The term 'Commission' as used in this section shall refer to the Fair Political Practices Commission.

Attachments: Regulation 18401
Regulation 18427.1
Regulation 18700
Regulation 18705
Regulation 18707.9
Regulation 18730
Regulation 18750